SINGLE BENCH

CA 1002 (2) (5)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION(c) NO. 6774 of 2006

PETITIONER Ghanshyam Yadav S/o Shri Sunder Lal Yadav, aged about 26 years, Officiating Sarpanch of Gram Panchyat Chhind R/o Village & Post Chhind Tahsil Sarangarh Dist. Raigarh (C.G.)

P.R. No. 6802/06 P.M. Shrivastava
Presented by ...
dated 27-11-06

VERSUS

RESPONDENTS

1. Rameshwar Sahu S/o Shri Chamru Sahu, Sarpanch (Removed) Gram Panchyat Chhind Tahsil Sarangarh Dist. Raigarh (C.G.)
2. The Collector and Prescribed Officer Raigarh, Dist. Raigarh (C.G.)
3. The Sub Divisional Officer/Prescribed Officer Sarangarh Dist. Raigarh (C.G.)
4. The Returning Officer Tahsildar Sarangarh Dist. Raigarh (C.G.)

RECEIVED COPY
27/11/06
CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/~~227~~ OF THE COUNSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CEERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERES:

AFR

(47)

HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 6774 of 2006

Petitioner : Ghanshyam Yadav

Versus

Respondent : Rameshwar Sahu & others

Shri R. S. Patel, Advocate for the petitioner.

Shri Samer Behar, Advocate for the Caveater/respondent No. 1.

Shri N. K. Agarwal, Deputy Advocate General for the respondents No. 2, 3 and 4.

ORDER

(5th December , 2006)

1. The respondent No.1 was elected as Sarpanch of the Gram Panchayat Chhind, Tahsil – Sarangarh, District- Raigarh in the election held on 15.1.2005. The no confidence motion was brought against the respondent No.1 after issuance of notice on 31.3.2006. The prescribe authority i.e. Sub Divisional Officer (Revenue), Sarangarh, while issuing notice, directed Shri K. S. Mandavi, the then Tahsildar, Sarangarh to preside over the meeting of no confidence motion, which was to be held on 13.4.2006 at 12 O'clock.

2. In the meantime, Shri K. S. Mandavi was transferred from Sarangarh and one Shri Sameer Nag joined the office of the Tahsildar, Sarangarh on 4.4.2006. By virtue of the order dated 31.3.2006, whereby Shri Mandavi, the then Tahsildar was authorized to hold the meeting, Shri Nag presided over the meeting of no confidence motion on 13.4.2006.

3. The no confidence motion against Sarpanch/respondent No.1 was carried out by 16 votes out of 21 Panchas of the said gram Panchayat and 5 Panchas voted against the no confidence motion. As the no confidence motion was carried out, the Sarpanch/respondent No.1 was declared disqualified and the post of Sarpanch was deemed to be vacant.

4. Being aggrieved the Sarpanch/respondent No.1 filed an appeal before the Collector, Raigarh. The Collector, Raigarh vide order dated 16.11.2006 (Annexure P/1) passed in Case No. 03/A-89/2006-2007 Village-Chind, Tahsil-Saranggarh, allowed the appeal and held that the no confidence motion was not in accordance with law on the ground that Shri K. S. Mandavi, the then Tahsildar was authorized to preside over the meeting by name. Shri Sameer Nag, who joined the office of Tahsildar on 4.4.2006 was not authorized to preside over the meeting and as such, the said meting was void and non-est.

5. The Collector has ignored the fact that at the time of holding no confidence motion Shri Mandavi was not holding the office of the Tahsildar, Saranggarh, as such, even otherwise, Shri Mandavi was not competent to preside over the meeting. Shri Sameer Nag, who joined the office of the Tahsildar, Saranggarh on 4.4.2006 by virtue of holding the post of Tahsildar, was so authorized to preside over the meeting.

6. Shri R. S. Patel, learned counsel for the petitioner submits that even if, Shri Sameer Nag was not authorized by name, the no confidence motion carried against the Sarpanch/respondent No.1, cannot be held void and nonest as 16 Panchas out of 21 have

voted in favour of the no confidence motion and this fact has not been disputed by the respondent No.1.

7. Learned counsel appearing for the petitioner relied on a decision of the High Court of Madhya Pradesh in the case of **Prabhu Dayal Patel Vs. State of M.P. & another** { 2003 (5) M.P.H.T. 502 (DB) } to the effect that since no prejudice, whatsoever, is caused in any manner, and the resolution was passed by overwhelming majority, the no confidence motion cannot be declared as null and void.

8. I am in respectful agreement with the decision of the High Court of Madhya Pradesh in the case of Prabhu Dayal Patel (supra). In the facts of the present case, no prejudice has been pointed out by the respondent No.1 in any manner and the resolution was passed by overwhelming majority i.e. 16 out of 21 in favour of the no confidence motion and 5 out of 21 against the no confidence motion. Even otherwise, Shri Sameer Nag was competent to preside over the meeting. The respondent No.1 has also not raised this objection of incompetence of the presiding officer during the no confidence motion.

9. In the result, the impugned order dated 16.11.2006 (Annexure P/1) passed in Case No. 03/A-89/2006-2007 Village-Chind, Tahsil-Saranggarh, is set aside and it is directed that the resolution passed on 13.4.2006 be given full effect to.

10. The petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur